

**Date:** 13 July 2017

**Item:** Legal Compliance Report (1 October 2016 – 31 March 2017)

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**This report will be considered in public**

## **1 Summary**

- 1.1 This paper summarises the information provided by each TfL Directorate for the Legal Compliance Report for the period 1 October 2016 to 31 March 2017.

## **2 Recommendation**

- 2.1 **The Committee is asked to note the report.**

## **3 Background**

- 3.1 The Legal Compliance Report is compiled from information supplied through questionnaires completed by each TfL Directorate and follow up discussions concerning known legal compliance issues.

## **4 Scope of the Report**

- 4.1 The Directorates were asked to identify where they are aware of any alleged breaches of law between 1 October 2016 and 31 March 2017. The questionnaire sought responses concerning the following:
- (a) prosecutions against TfL;
  - (b) formal warnings or notices from the Health and Safety Executive, the Office of Rail and Road, the London Fire and Emergency Planning Authority, the Environment Agency, the Information Commissioner or other Government Agencies;
  - (c) investigations by an Ombudsman;
  - (d) alleged legal breaches notified by Local Authorities or other bodies;
  - (e) judicial reviews;
  - (f) involvement in inquests;
  - (g) commercial/contract claims in excess of £100,000;
  - (h) personal injury claims;
  - (i) proceedings in relation to discrimination on the grounds of race, sex, disability, age, religion or belief, sexual orientation, equal pay or breach of contract;
  - (j) wrongful or unfair dismissal;

- (k) actions to recover unpaid debt in excess of £5,000;
  - (l) breaches of EU/UK procurement rules and/or the Competition Act;
  - (m) other material breaches of the law;
  - (n) any other material compliance issues; and
  - (o) any initiatives introduced by Directorates to address compliance issues.
- 4.2 The reporting periods for the tables included in this report follow the six monthly Legal Compliance reporting periods from April to September and October to March. Tables are included where there is sufficient data from which to consider any trend analysis. The tables commence in the reporting period covering October 2013 – March 2014. Each period includes any ongoing matters carried over from previous reporting periods where applicable. Any new matters appear in blue font. In accordance with TfL's commitment to transparency, the legal compliance report is included in this public paper.

## **5 Commentary on Legal Compliance Issues**

### **Notification of Intention to Prosecute**

- 5.1 No notices were reported for this period.

### **Formal Warnings or Notices from the Health and Safety Executive (HSE) or Office of Rail and Road (ORR)**

- 5.2 Surface Transport previously reported an incident on the A40 in November 2011, in which a motorcyclist was injured as a result of temporary bridging plates installed over defective expansion joints on the A40 Westway. The HSE investigation is still ongoing and no formal warnings or notices have been issued to date.

### **Formal Warnings or Notices from the London Fire and Emergency Planning Authority (LFEPA)**

- 5.3 No warnings or notices were reported for this period.

### **Formal Warnings or Notices from the Environment Agency**

- 5.4 Surface Transport reported receiving two notifications under Article 31(4) of the Plant Health (Forestry) Order 2005 from the Forestry Commission in relation to Oak Processionary Moth (OPM) infestation on oak trees on multiple TfL properties. The notifications require TfL to spray the affected trees between 1 April and 30 June 2017. If the OPM infestation is still found after treatment TfL will arrange for the manual removal and disposal of the OPM nests by 31 August 2017. Further spraying of trees within 50 meters of the infested trees is planned between April to June 2018. TfL will continue to monitor the OPM infestation.

## Environment Agency Formal Warnings/Notices

	Reporting Period						
	10/13-3/14	04/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Surface Transport</b>		4			1	1	2
<b>Underground</b>	1		1		5		

### Formal Warnings or Notices from the Information Commissioner

- 5.5 The Information Commissioner's Office (ICO) investigates alleged instances of non-compliance with the Data Protection Act 1998 (the DPA), the Freedom of Information Act 2000 (the FOIA), Environmental Information Regulations 2004 (the EIRs) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the PECR).
- 5.6 No formal action was taken by the ICO between 1 October 2016 and 31 March 2017 in connection with TfL's compliance with the DPA.
- 5.7 During this period, the ICO notified TfL of six new complaints from individuals who considered that TfL had failed to process their personal data in accordance with the DPA.
- 5.8 The first of the new complaints arose in connection with a subject access request (SAR) where the requester claimed that he had not been provided with all the data to which he was entitled within the statutory deadline of 40 calendar days. The ICO found that TfL was in breach of the DPA as a result of the response being sent late but did not take any further action. The response had in fact been sent by the time that the ICO informed TfL of the complaint.
- 5.9 The second new complaint concerned a customer who had made a request for TfL to delete personal data that she considered to be inaccurate. The ICO found TfL to be in breach of the DPA for failing to respond to the request within 21 days as required by the DPA. TfL took steps to delete or anonymise all the relevant data and no further action was required.
- 5.10 The third new complaint arose in connection with a SAR where the requester considered that TfL had not provided all relevant data. On investigation it was found that there was additional data that had not been identified as within scope and which was subsequently provided to the requester. The ICO required no further action to be taken.
- 5.11 The fourth new complaint concerned disclosure of sensitive personal data. Since the end of the reporting period the ICO found that TfL had breached the DPA with respect to the disclosure to a trade union representative and that in future TfL should contact data subjects where the data subject's wishes on disclosure are considered ambiguous. However the ICO required no further action.
- 5.12 The fifth new complaint concerned inaccurate data being held on TfL's systems in relation to a customer's contactless payment card, which was incorrectly identified as having failed a revenue collection inspection. TfL acknowledged that the data was inaccurate but that it was not technically possible to delete the data from the

system. The ICO found that where this is the case TfL should ensure that a letter confirming this is retained on the complainant's account.

- 5.13 The sixth complaint relates to the manner in which TfL responded to a complainant's SAR. The application was made in support of employment tribunal proceedings which have been settled. A decision is awaited.
- 5.14 There were no outstanding data protection complaints from the previous reporting period.
- 5.15 During this reporting period TfL notified the ICO of two data breaches which involved potential compromise of personal data. The first occurred when an employee's bag was stolen from their home which contained details of 17 individuals suspected of fare evasion, though the electronic devices were both password/ PIN protected. The devices were remotely wiped when the theft was reported. Affected data subjects were informed and offered identity theft protection. The ICO found that, although a data breach may have occurred, no further action was required because of the remedial actions taken, the incident was a rare event and because TfL had appropriate policies and procedures in place.
- 5.16 The second data breach notification related to the Congestion Charge Auto Pay system (operated by Capita), which enables customers to manage their payments automatically using a nominated payment card which is charged on a monthly basis. Several customers contacted TfL when they received monthly statements which related to other people. After investigation this was found to be the result of a software error following a system upgrade in December 2016 and that in total 112 customers had been affected. TfL contacted these customers and offered ID theft protection. After the end of the reporting period, the ICO found that although a breach of the seventh data protection principle had occurred, no further action was required because prompt action was taken to mitigate the likelihood of detriment, the personal data was limited in scope, TfL had appropriate contractual obligations in place and there was no indication of an underlying issue.
- 5.17 The FOIA and the EIRs give a general right of access to information held by public authorities. Public authorities are generally required to respond to requests for information within 20 working days and provide the requested information unless an exemption applies. Any person who has made a request to a public authority for the disclosure of information under the FOIA or the EIRs can apply to the ICO for a decision on whether a request has been dealt with in accordance with the FOIA or EIRs. Appeals against the ICO's decisions are heard by the First-Tier Tribunal (Information Rights).
- 5.18 TfL received 1458 requests under the FOIA and EIRs between period 7 2016/7 and period 13 2016/17, and responded to 79.6 per cent of such requests within the statutory time limit. Since the end of the reporting period this has increased and 86.5 per cent of requests were answered on time in period 1 of 2017/18.
- 5.19 In January 2017 a new FOI hub was launched on the TfL website. Responses to requests made under FOIA and EIR are now published in anonymised format on the website. Visitors to the TfL website can use the FOI hub to search previous responses and submit new information requests.

- 5.20 Six complaints to the ICO were outstanding at the end of the last reporting period. These have now all been closed or otherwise resolved. A complaint about the use of an exemption to withhold information regarding the assurances sought by TfL from Uber about Uberpool was dismissed by the ICO, who upheld the exemption on the grounds that disclosure would prejudice the undertaking of regulatory functions. The second complaint concerned a delay in responding to a request for Internal Review and was resolved through the completion of the Internal Review. The third complaint concerned the application of an exemption preventing disclosure of information contained in communications with the Royal Household about the naming of the Elizabeth line and the ICO upheld the application of the exemption. The fourth complaint related to the refusal of a request for historic information about the redevelopment of South Kensington station on grounds that it was manifestly unreasonable. The ICO issued a Decision Notice partially upholding the complaint and found that the request about the redevelopment of the station was manifestly unreasonable but that part of the request relating to the tenancy of a commercial unit on the site should have been considered separately. The decision required TfL to conduct a further search for information relating to the tenancy which TfL complied with. The relevant information was provided to the requester. The fifth complaint related to a request for information about the outcome of complaints made against bus drivers. A Decision Notice was issued in TfL's favour.
- 5.21 In the sixth outstanding complaint, during the reporting period, the complainant appealed a finding of the ICO regarding whether a request for disclosure of information contained in the complainant's case file should be handled under FOIA or the DPA, and which questioned whether all information had been provided. The ICO had previously found in TfL's favour. A hearing of the Information Tribunal was held on 26 October 2016 and the Tribunal dismissed the appeal on the basis that TfL had responded to the request appropriately and all relevant information had been disclosed.
- 5.22 During this reporting period TfL were notified by the ICO of ten new complaints regarding TfL's handling of FOI and EIR requests. Four complaints remain open, these variously relate to the adequacy of a search for information held regarding payments to taxi schools; a complaint regarding the refusal of a request for the disclosure of legal advice about a planning matter connected with the extension of the Northern Line, the refusal of a request for a draft business case during a consultation about proposed changes to bus services and the refusal to disclose details of the outturn costs of completed Crossrail contracts on the grounds of commercial sensitivity.
- 5.23 Five complaints were closed during this period, four related to delayed responses to FOI requests, two of which were submitted by the same individual, and have been answered. The fifth complaint was about the application of the FOI cost limit to refuse a request for all correspondence relating to street light defects along the Holloway Road. A Decision Notice was issued in TfL's favour. Since the end of this reporting period, a Decision Notice was issued in TfL's favour in respect of the sixth complaint relating to the refusal to provide details of a customer complaint against a bus driver.

## Information Commissioner Formal Warnings/Notices

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Commercial Development</b>							1
<b>Finance</b>							
<b>General Counsel</b>	1					1	1
<b>Group HR</b>			1			1	
<b>Planning</b>	1						
<b>Rail</b>		1					
<b>Surface Transport</b>	2	4	1	3	1	2	
<b>Underground</b>					1		
<b>Crossrail</b>							

### Formal Warnings or Notices from any other Government Department or Agency Indicating a Breach of Law

5.24 No warnings or notices were reported for this period.

### Investigation by an Ombudsman

- 5.25 Surface Transport reported one outstanding investigation from the last report and seven new investigations. The outstanding investigation relates to a complaint of an increase in noise following changes to a head house (station building) outside a property. The seven new investigations relate to the manner in which a private hire driver licence application was administered; buses parking in front of a pub; bus drivers leaving engines running at a bus stand near a complainant's home and TfL's failure to consult before adding a new route to a bus stand; withdrawal of a nominee staff travel pass; failing to make available copies of coloured plans showing proposed changes to parking arrangements outside the complainant's home and the manner in which the complaint was addressed; the administration of an application to complete a Knowledge examination; and a Zip Oyster card being confiscated from a minor following an incident on a bus.
- 5.26 In the outstanding investigation, the LGO has requested copies of TfL correspondence and details of any action taken to address the noise issue. The complainant has requested that the structure be redesigned or rebuilt to prevent noise from the building in between cleaning programmes. TfL concluded that it would not be feasible to do so and that the noise readings are not excessive. The LGO have discontinued the complaint in order to allow the complainant to complain to the industrial noise control team at the Council. TfL is monitoring the matter.
- 5.27 In the first new investigation, the LGO was satisfied with the manner in which TfL resolved the complaint. The driver has been issued with a licence.
- 5.28 In the second investigation TfL had made a payment of £250 to the complainant for the distress caused by the matter and is monitoring the bus stand.

- 5.29 In the third investigation the LGO found that TfL should have consulted before adding additional routes to the stand but there was not enough evidence to conclude that a consultation would have made any difference to the outcome. TfL continues to monitor the conduct at the bus stands.
- 5.30 In the fourth new investigation, the LGO determined that it could not investigate the matter as it relates to an employee discretionary benefit.
- 5.31 In the fifth new investigation, the LGO found that TfL was at fault and recommended TfL provides a written apology for the manner in which the complaint was dealt with and ensure that requests for copy documents are dealt with swiftly in the future.
- 5.32 In the sixth new investigation, TfL has complied with the LGO's request to provide information and awaits an outcome.
- 5.33 In the seventh new investigation, The LGO found no fault in TfL's decision not to reinstate the Zip Oyster card. TfL has reimbursed the £20 administration fee that was paid for the application.

#### Investigations by Ombudsman

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Rail</b>	1						
<b>Surface Transport</b>	4	4	4	3	3	5	1+7

#### Notices Received Regarding any Alleged Breach of Law by a Local Authority or Other External Agency

- 5.34 Planning reported five outstanding Enforcement Notices from the previous reporting period and two new notices in the current period. The first outstanding notice was a Decision Notice of an Enforcement Appeal received on 25 October 2013 regarding the installation of a new shopfront, awning and roller shutter at 42-43 Haven Green. The required work to comply with the Notice has commenced. TfL awaits confirmation from the Enforcement Office regarding progress of the work. TfL continues to monitor the matter.
- 5.35 The second outstanding notice (received on 25 February 2014) was an Enforcement Notice from London Borough of Haringey relating to an unauthorised front extension to units on 231-243 High Road and 249a High Road Tottenham. The tenant failed to remove the extension by 31 July 2014 as required by the Notice. TfL wrote to the tenant to remind them of their lease obligations and the risk of prosecution by the London Borough of Haringey. The tenant lodged an appeal with the Planning Inspectorate. The Enforcement Notice remains stayed while a newly appointed property management company prepares proposals for the frontages of the properties and all the adjacent properties. TfL awaits an update from the Enforcement Officer and continues to monitor the matter.

- 5.36 The third outstanding notice (received on 23 May 2016) from the London Borough of Brent relates to a blue painted shop frontage and signs installed without consent at Kilburn Underground station. TfL has contacted the tenant to remind them of their lease obligations. The required works have been completed and the matter is now closed.
- 5.37 The fourth outstanding notice (received on 22 July 2016) from London Borough of Lambeth, relates to the unauthorised use of a site and use of roller shutters at 20A Atlantic Road and Electric Road. The tenancy has been terminated but the roller shutters have not yet been removed by the tenant. TfL continues to monitor the situation.
- 5.38 The fifth outstanding notice (received on 30 September 2016) from London Borough of Tower Hamlets, relates to a development at Shadwell station which it is claimed does not meet a requirement in the planning permission. Following discussions with the developer the works have commenced in accordance with the planning permission. TfL is monitoring the situation.
- 5.39 The first new Enforcement Notice (received on 1 March 2017) relates to the installation of a shipping container and the material change of use from London Underground Operational Land to retail at land over Clapham Common Deep Tube Shelter. TfL has written to the tenant to remind them of their lease obligations with regards to the sub-tenant. The sub-tenant has ceased trading. TfL awaits confirmation from the Enforcement Office that the matter is closed.
- 5.40 The second new Enforcement Notice (received on 23 March 2017) from Westminster City Council (WCC) relates to the unauthorised use of a roller shutter at 27 Oxford Street. Following sending confirmation to WCC that London Underground's land interest is at sub-soil level only the matter was closed.

#### Alleged Breaches of Law by a Local Authority/Other External Agency

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Finance</b>	1						
<b>Planning</b>	5	6	6	6	7	9	5 + 2
<b>Underground</b>		1					

#### Decisions Subject to a Judicial Review

- 5.41 Surface Transport previously reported that Eventech Limited (a subsidiary of Addison Lee) was granted permission to bring a judicial review against the London Borough of Camden's Parking Adjudicator's decision not to allow Private Hire Vehicles (PHV) the same rights as Hackney licensed vehicles to use bus lanes. In April 2012, TfL successfully obtained an injunction preventing Addison Lee from causing, encouraging or assisting PHV drivers to use bus lanes marked for use by taxis. The Court also declared the indemnity Addison Lee had offered to drivers in respect of bus lane fines and liabilities to be void and unenforceable. The hearing took place on 19-21 June 2012 and the application was refused on all grounds and Eventech Limited was ordered to pay TfL's costs of defending the claim.



- 5.42 Eventech Limited then made an application for permission to appeal the decision and this was granted on 6 December 2012. The Court of Appeal hearing took place on 23 and 24 May 2013. On 29 September 2013 the Court of Appeal issued an Order referring the State aid questions raised to the European Court of Justice (ECJ). The appeal was adjourned pending the outcome of the ECJ hearing which was held on 3 July 2014. On 24 September 2014, the Advocate General, who represents the EU's interests, issued its opinion to the ECJ. The Opinion concluded that if TfL could show that black cabs and PHVs are not legally and factually comparable on grounds of safety and efficiency (which the Advocate General suggested may well be the case), no question of State aid would arise by allowing taxis but not PHVs to use the bus lanes during certain hours of the day.
- 5.43 On 14 January 2015, the ECJ gave its judgment on the State aid issues. The ECJ's decision concluded that making bus lanes available to taxis and not PHVs in order to establish a safe and efficient transport system does not appear of itself to amount to State aid. The judgment also states that the policy may conceivably affect State trade but this finding alone would not affect the conclusion overall that the policy does not appear to the ECJ to give rise to State aid.
- 5.44 The Court of Appeal now has to determine the State aid issue (which must take into account the ECJ's ruling) and whether the policy breached freedom of movement of services and the principle of equal treatment. Eventech's appeal proceedings are stayed to allow the parties to mediate with a view to the claim being withdrawn.
- 5.45 Surface Transport previously reported an application for a judicial review made by Uber London Limited. Uber and three private hire drivers sought permission for a judicial review of changes to private hire regulations including the telephone requirement (for which it also sought an injunction) as well as requirements relating to English language skills, insurance and operating model changes. A permission hearing took place on 1 September 2016 and permission was granted on restricted grounds. The injunction application was also granted pending the outcome of the substantive hearing. Uber and two of the drivers appealed to the Court of Appeal and on 20 October 2016 the Court of Appeal granted permission for all grounds to be considered.
- 5.46 A hearing took place on 28 February 2017 to 2 March 2017 and the Court decided that the English Language Requirement as implemented was justified and lawful and that the Telephone Requirement as implemented was not justified but a requirement for passengers to speak with operators in emergency situations would be appropriate. TfL agreed to review the Insurance Requirement in light of the information brought to light during the hearing about the role of the Motor Insurance Bureau in compensating victims of uninsured accidents.
- 5.47 The Claimants applied for permission to appeal the decision on the English Language Requirement and TfL applied for permission to appeal the finding on the Telephone Requirement. Since the end of the reporting period, permission was granted for both appeals which will be heard on 20 to 23 February 2018.

- 5.48 Surface Transport previously reported that in June 2016 Guy's & St Thomas' NHS Foundation Trust issued judicial review proceedings challenging TfL's decision to include Bus Stop Bypasses as part of road layout changes at Westminster Bridge South. The proceedings were adjourned to allow the parties to explore whether a design could be found which is acceptable to everyone. An agreement has been reached on a revised design for the Bus Stop Bypasses in this location now (to include a zebra crossing) and the matter is now resolved.
- 5.49 Crossrail previously reported a judicial review application on 8 December 2015 arising out of its decision not to negotiate exclusively with a consortium for the right to develop above the western ticket hall at Tottenham Court Road. A hearing took place on 3 March 2016 at which an application for leave to appeal was refused and the consortium was ordered to pay Crossrail's costs. The consortium appealed that decision which was heard in the Court of Appeal on 6 April 2017. A decision is awaited.
- 5.50 London Underground reported that on 5 September 2016 Heathrow Airport Ltd (HAL) challenged by judicial review a decision of the Office of Rail and Road (ORR) on the level of charges which HAL can apply to users of the Heathrow Spur (the Spur), the piece of track, owned by HAL, running from the Great Western Main Line to Heathrow. The ORR decided that HAL could charge users of the Spur, which are planned soon to include the Elizabeth line, access and maintenance fees, but could not charge any additional amount reflecting the cost of constructing the Spur in the 1990s. The hearing took place on 21-23 February 2017, with TfL and the Department for Transport participating as Interested Parties, and the Civil Aviation Authority intervening. Since the end of the reporting period, on 26 May 2017 the Court dismissed HAL's claims.
- 5.51 On 9 December 2016, the London Boroughs of Hillingdon, Wandsworth and Richmond and the Royal Borough of Windsor and Maidenhead, Greenpeace and a resident of one of the 'Heathrow villages' commenced a judicial review action against the Secretary of State for Transport in respect of his decision that increased aviation capacity in the South East of England can best be achieved by building a third runway at Heathrow. TfL and the Mayor were both interested parties to the action. The Secretary of State applied to have the claim struck out on the basis that it had been brought prematurely. On 30 January 2017, the Court struck out the claim.

## Judicial Reviews of decisions by TfL<sup>1</sup>

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Crossrail</b>			1	1		1	1
<b>Customer Communication and Technology</b>	2	1	1	1	1	1	
<b>Finance</b>	1						
<b>Planning</b>			1				
<b>Surface Transport</b>	1	2	1	2	3	4	3
<b>Underground</b>	1		1		1		

## Inquests

- 5.52 London Underground has been involved in 46 inquests, 22 have been carried forward from the previous report. 24 new London Underground inquests are included in this report for the first time.
- 5.53 Of the 22 inquests carried forward from the previous report, two were accidents, ten were suicides, two open conclusions and eight are awaited. Of the 24 new inquests reported, two were suicides, one was a narrative conclusion, two were open conclusion and 19 are awaited.
- 5.54 London Rail reported four outstanding inquests and three new inquests which are included in this report for the first time. The four outstanding inquests are awaited. Of the new three inquests two were suicides and one is awaited.
- 5.55 Surface Transport reported 53 outstanding inquests from the last report and 48 new inquests included in this report for the first time.
- 5.56 Of the 53 outstanding inquests, 37 inquests were adjourned pending the outcome of criminal proceedings or police investigations, four are awaited, two have status unknown, five were road traffic collisions or accidents and five involve criminal proceedings and await the Coroner's decision on whether to resume the inquests.
- 5.57 Of the 48 newly-reported matters, 38 inquests were adjourned pending the outcome of police investigations, nine are awaited and one was an open conclusion.

<sup>1</sup> Judicial Reviews in which TfL is an interested party are not included in the table.

## Inquests

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Crossrail</b>	1	2					
<b>Surface Transport</b>	11	12	13	13	57	79	101 53 + 48
<b>Rail</b>	2	3	3	1	1	7	7 4 + 3
<b>Underground</b>	30	32	21	29	35	31	46 22 + 24

## Inquest Findings

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Other</b>	1	1	1	2	5	7	
<b>Narrative</b>		1		1	2	1	1
<b>Self- harm</b>	5						
<b>Misadventure</b>		1		1			
<b>Open Verdict</b>	4	2	2	2	1	3	5
<b>Accidental</b>	6	8	4	3	5	18	7
<b>Suicide/ took own life</b>	2	11	13	6	17	8	14

## Commercial / Contract Claims Brought by or Against TfL in Excess of £100,000 (Not Including Personal Injury Claims)

- 5.58 In the previous report, Surface Transport reported one claim from a contractor under the London Highways Alliance Contract in relation to restrictions on working on the Transport for London Road Network. Proceedings were issued by the contractor on 6 March 2017. A hearing date in the High Court is awaited.
- 5.59 In the previous report, London Underground reported a claim brought by Thorntask Limited for allegedly outstanding amounts under four works contracts across the London Underground network. London Underground filed a counterclaim for commissions paid by Thorntask to two former London Underground employees. We obtained a court order striking out the claim and obtained judgment in London Underground's favour. Following Thorntask's failure to satisfy the judgment debt, since the end of the reporting period, the court ordered that Thorntask be wound up and the Official Receiver was appointed as liquidator upon confidential settlement terms.
- 5.60 On 9 September 2016 the TfL Trustee Company Limited, TfL's pension trustee subsidiary, has issued proceedings against HMRC for overpaid VAT on fund management services. A stay of the proceedings has been agreed, pending the outcome of two test cases which are currently being considered by the courts.

- 5.61 Crossrail reported a claim made by a contractor alleging negligent misstatement in relation a Helpdesk enquiry relating to safeguarding. Legal proceedings have been issued in the High Court and a hearing date is waited.
- 5.62 Customers, Communication and Technology reported that TfL issued proceedings against Visa and Mastercard in August 2016 in the High Court and separate but related proceedings against Mastercard in September 2016 in the Competition Appeal Tribunal in relation to Multi-lateral interchanges fees (MIFs). TfL is charged MIFs by Visa and Mastercard on all credit card transactions. The claims are on the same basis as many other claims which have been brought by other organisations in the US and the UK on the basis that the MIF arrangements unlawfully restrict competition and are anti-competitive. The proceedings have been stayed pending the outcome of a number of test cases which are currently being considered by the courts.

#### Commercial/ Contract Claims

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Crossrail</b>							1
<b>Finance</b>						1	1
<b>Surface Transport</b>					1	2	1
<b>Underground</b>		1			1	2	1

#### Personal Injury Claims

- 5.63 London Underground has been the subject of 230 claims for personal injury that were closed during the reporting period, of which 36 claims were employers' liability claims by staff and 194 claims were for public liability by customers/members of the public.
- 5.64 Of the 194 claims for public liability, 147 were closed without payment and 47 were settled.
- 5.65 Of the 36 claims for employers' liability, nine were closed without payment and 27 were settled.
- 5.66 London Rail has been the subject of three claims for personal injury that were closed during the reporting period. The claims were for public liability. Of the three claims, one was closed without payment and two were settled.
- 5.67 Surface Transport has been the subject of 291 claims for personal injury that were closed during the reporting period, of which five claims were for employers' liability and 286 claims were for public liability. The increase in the number of claims since the last reporting period largely relates to claims received regarding the tragic Sandlilands derailment in November 2016.
- 5.68 Of the 286 claims for public liability, 168 were closed without payment and 118 were settled.
- 5.69 Of the five claims for employers' liability, one was closed without payment and

four were settled.

- 5.70 Finance has been subject to two claims for personal injury that were closed during the reporting period. One claim was for employers' liability which was closed without payment and the one claim for public liability was settled.
- 5.71 Crossrail has been subject to one claim for personal injury that was closed during the reporting period. The claim was for employers' liability which was settled.
- 5.72 Out of the 527 personal injury claims closed by TfL during this period, 329 were closed without payment and 198 were settled. There was an increase of 69 personal injury claim closed for this reporting period compared with the 458 claims closed and reported in the last reporting period (1 April 2016 – 30 September 2016).

#### Personal Injury Claims Concluded in the Reporting Period

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Crossrail</b>							<b>1</b>
<b>Finance</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>2</b>
<b>London Transport Museum</b>					<b>1</b>		
<b>Surface Transport</b>	<b>342</b>	<b>331</b>	<b>371</b>	<b>256</b>	<b>241</b>	<b>220</b>	<b>291</b>
<b>London Rail</b>	<b>8</b>	<b>10</b>	<b>12</b>	<b>10</b>	<b>13</b>	<b>2</b>	<b>3</b>
<b>Underground</b>	<b>230</b>	<b>249</b>	<b>271</b>	<b>253</b>	<b>259</b>	<b>234</b>	<b>230</b>
<b>Total</b>	<b>586</b>	<b>592</b>	<b>655</b>	<b>521</b>	<b>517</b>	<b>458</b>	<b>527</b>

#### Personal Injury Claims – Concluded Employers' Liability (Staff)

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Crossrail</b>							<b>1</b>
<b>Finance</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Surface Transport</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>7</b>		<b>4</b>	<b>5</b>
<b>Underground</b>	<b>45</b>	<b>51</b>	<b>40</b>	<b>44</b>	<b>41</b>	<b>44</b>	<b>36</b>

## Personal Injury Claims – Concluded Public Liability (Customers)

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Finance</b>	5	1		1	2	1	1
<b>London Transport Museum</b>					1		
<b>London Rail</b>	8	10	12	10	13	2	3
<b>Surface Transport</b>	339	327	366	249	241	216	286
<b>Underground</b>	185	198	231	209	218	190	194

## Personal Injury Claims – Concluded Cases

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>£15,000</b>	66	87	88	69	51	29	89
<b>£10,000 - £14,999</b>	67	56	38	45	24	22	17
<b>£5,000 - £9,999</b>	39	51	60	46	44	32	32
<b>£1 - £4,999</b>	89	95	98	104	78	64	63
<b>£0</b>	325	303	371	255	320	311	326

## Employment Tribunal (ET) Proceedings

- 5.73 TfL continues to take a proactive and robust approach to managing ET cases, coupled with an extensive training programme for managers on the latest developments in the law and best practice so as to avoid employment disputes as far as possible.
- 5.74 London Underground has been the subject of 43 ET claims during the period of this report. Of these, 24 were for unfair dismissal, three were for sex discrimination, three were for trade union detriment, five were for disability discrimination, five were for race discrimination, one was for breach of the Agency Workers Regulations, one was for public interest disclosure and one was for unlawful deductions from wages.
- 5.75 Surface Transport has been the subject of four ET claims during the period of which were all unfair dismissal claims.
- 5.76 Professional Services have been the subject of 14 ET claims during the period. Of these, two were for unfair dismissal, seven were for disability discrimination, three were for race discrimination, one for discrimination against religion and one for age discrimination.
- 5.77 Crossrail have been the subject of two ET claims during the period. One was for discrimination on the grounds of disability and one for unfair dismissal. Both matters were settled.

- 5.78 Of a total of 63 ET claims brought during the period, 29 cases are ongoing and 34 were concluded during the period. Of the 34 ET cases concluded during this period, eight were won, five were withdrawn, six were struck out, nine settled and six were lost. Of the six cases lost, two were only partially lost, three were lost and one dismissed.
- 5.79 There was an decrease of five ET claims during this reporting period compared with the 68 claims reported in the last reporting period (1 April 2016 – 30 September 2016).

#### Total number of Claims

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Corporate</b>	13	11	10	14	16	15	14
<b>Crossrail</b>	2	2	1	1		2	2
<b>Surface Transport</b>	6	3	7	10	8	6	4
<b>Underground</b>	72	62	52	43	40	45	43
<b>Total</b>	93	78	68	68	64	68	63

#### Employment Tribunal Cases Concluded

\*Claims won include withdrawn and struck out claims

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Lost</b>	2	1	4	8	3	5	6
<b>Settled</b>	4	12	6	8	7	11	9
<b>Won *</b>	29	23	21	15	14	14	19

#### Civil Debt in Excess of £5,000

- 5.80 Surface Transport previously reported a claim brought against TfL by the London Borough of Enfield in March 2014 for the recovery of unpaid invoices relating to monitoring CCTV cameras. Following discussions between the parties, an agreement has now been reached.
- 5.81 Finance previously reported a claim received from the London Borough of Hackney for non-payment of non-Domestic Rates since 2013 relating to a property at 324 Railway Arch, E8 4EA. TfL had not received invoices for the payment of the non-Domestic Rates due to use of an incorrect address on the account. All invoices have now been paid in full.



## Unpaid Debt

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Crossrail</b>		1					
<b>Finance</b>					1	1	1
<b>Planning</b>		3					
<b>Surface Transport</b>			1	1	1	2	1
<b>Underground</b>				1			

## Breaches or Alleged Breaches of EU/UK Procurement Rules and/or the Competition Act 1998

- 5.82 Finance reported three new alleged breaches. The first alleged breach relates to an unsuccessful bidder alleging that they were not treated fairly. TfL has responded to the unsuccessful bidder resulting in no further action.
- 5.83 The second alleged breach relates to the Fire and Mechanical and Electrical works in which an unsuccessful bidder complained about the competition evaluation process. TfL has responded to the unsuccessful bidder and the matter is resolved.
- 5.84 The third alleged breach is in relation to a supplier who is dissatisfied with TfL's decision not to extend its framework agreement. TfL denies allegations of breach of procurement rules. TfL responded to the supplier's request for information and no further correspondence has been received.
- 5.85 Since the end of the reporting period, London Underground reported that on 11 May 2017 it had received a claim in respect of an alleged breach of the bidding evaluation process for the 92 Tube Stock AC traction System replacement contract. The matter is ongoing.

## Breaches or Alleged Breaches of EU/UK Procurement Rules and/or the Competition Act 1998

	Reporting Period						
	10/13-3/14	4/14-9/15	10/14-3/15	4/15-9/15	10/15-3/16	4/16-9/16	10/16-3/17
<b>Crossrail</b>							
<b>Commercial Development</b>					1		
<b>Finance</b>	1	1	1	1	5	1	3
<b>Planning</b>							
<b>Surface Transport</b>							
<b>Underground</b>		4	2	2	1		

## Other Known Breaches

- 5.86 No other alleged breaches were identified.

## **Other Material Compliance Issues**

- 5.87 Finance previously reported a dispute in relation to highways land that was vested in various London Boroughs which TfL maintain and was transferred to TfL on 3 July 2000 pursuant to the GLA Roads and Side Roads (Transfer of Property) Order 2000. Of the 32 London boroughs, agreement has been reached for land transfers with 29 boroughs. A hearing in the Court of Appeal was held on 1 and 2 March 2017 in relation to the remaining two boroughs and a decision is awaited.

## **Management of Compliance Issues**

- 5.88 TfL's legal and compliance risks are managed as part of TfL's overarching strategic risk management framework. A range of operational and assurance processes are in place to mitigate these risks at all levels in the organisation.
- 5.89 These safeguards are supported by the provision of advice on and training in relevant legal and corporate governance issues, which are tailored to the needs of TfL's business units.
- 5.90 The legal and compliance framework is the subject of continuous review and improvement. Initiatives to address compliance in Information Governance and across TfL have included:
- (a) continued advice and direction to all areas of TfL (eg on the use of customer and employee data, requests for the disclosure of information, management of information), working with business areas to develop and review processes, systems and supplier relationships as necessary;
  - (b) promotion of e-learning courses on Freedom of Information, Data Protection and records management, including mobile versions available for staff without computer access;
  - (c) the promotion through the TfL Management System of Information Governance policies, instructions and guidance;
  - (d) the promotion and maintenance of a programme of pro-active publication of information, to improve transparency and simplify the handling of FOI requests;
  - (e) ongoing bespoke training to the business and HR on a range of employment issues including employment law updates, reasonable adjustments requirements and effective case management and providing guidance and best practice learned from Employment Tribunal cases;
  - (f) training on a range of legal issues including contract law updates; NEC3 contracts, an overview of Environmental Impact Assessment and planning and property law updates;
  - (g) the delivery of bespoke training in connection with the new Utilities Contracts Regulations and preparation of robust documentation to ensure compliance. A 'train the trainer' approach continues to ensure business areas retain a good level of knowledge with the teams;
  - (h) continued collaboration to update the Modern Slavery Statement to support

compliance with the Modern Slavery Act 2015;

- (i) continued updates to the Work Related Road Risk clauses as part of the introduction of Direct Vision Standard requirements into TfL contracts in order to minimise the risk of road accidents, and to enhance the framework for supporting compliance with legal health and safety requirements throughout TfL's supply chain;
- (j) collaboration to review processes to reduce/ mitigate the risk of fraud and corruption in the procurement lifecycle and the introduction of an additional approval process to identify potential fraudulent transactions;
- (k) continued updates to the standing TfL PQQ template and other documents in the TfL Commercial Toolkit to capture ongoing regulatory changes;
- (l) updates to guidance relating to the treatment of abnormally low tenderers and Procurement Strategy Template to ensure assurance requirements for key commercial documents;
- (m) the ongoing issue of the Commercial Law Bulletin to the Commercial Teams to support the dissemination of important messages relating to regulatory and legal issues;
- (n) introduction of a property accounts management project to improve rent collection and reporting;
- (o) the preparation of an action plan to monitor the Health and Safety compliance of TfL tenants on its commercial estate;
- (p) raising awareness of TfL's Knowledge Portal to record, share and search for lessons learned;
- (q) implementation of an assurance process to help minimise the scope for errors in procurement and commercial processes and documents to support legal compliance; and
- (r) the introduction of new TfL Standing Orders and production of guidance and flowcharts to support the compliance of new governance processes.

## **6 Conclusions**

- 6.1 The Legal Compliance Report for the period 1 October 2016 to 31 March 2017 sets out the legal and compliance matters of which TfL senior management is aware. There are no material breaches of the law which would affect TfL's continued operations.
- 6.2 Reported matters continue to be broadly in line with previous reports.

**List of Appendices to this report:**

None

**List of Background Papers:**

None

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